THE HON'BLE Mr. JUSTICE C.V. RAMULU

W.P.No.4156 OF 1998

ORDER:

This Writ Petition is filed seeking a Mandamus to declare the proceedings in Rc.No.30/PC.II-1/96 dated 9.12.1997 issued by the 2nd respondent in so far as they are against the interests of the petitioners as arbitrary, illegal, violative of Articles 14, 16 and 21 of the Constitution of India and also contrary to G.O.Rt.No.1737, Education CII, Department, dated 3.12.1997 and consequently to direct the respondents to absorb them into the posts of Record Assistants from the date of the said Government Order.

It is the case of the petitioners that they have been working as contingent workers in the 3rd respondent-College. The 1st petitioner joined the service of the 3rd respondent on 9.12.1981 whereas the 2nd petitioner joined the service on 6.7.1984 and they have been continuously working as such till their services were absorbed as Record Assistants in aided vacant posts with effect from 17.12.1993. The 3rd respondent recommended their cases to the 2nd respondent to absorb them as Record Assistants. In fact, the petitioners were regularized in pursuance of G.O.Rt.No.1737, Education CII, Department dated 3.12.1997, which was issued in pursuance of the direction issued by this Court in W.P.No.28408 of 1995, whereunder the Government directed the respondents to regularize the services of the petitioners. Though the services of the petitioners were regularized with effect from 17.12.1993, the status of the petitioners was shown as contingent employees, in spite of existence of number of regular vacancies in the category of Record Assistants. The action on the part of the respondents in not absorbing the petitioners in regular posts of Record Assistants borne on the cadre strength of 3rd respondent-College is arbitrary and illegal.

A detailed counter affidavit has been filed denying the allegations made by the petitioners and it is asserted that since the employees are contingent staff they have to be adjusted and absorbed as contingent employees and they are not entitled for being absorbed as Record Assistants. It is further asserted that though there are no vacancies of contingent employees, in view of the directions issued by

the Government in the aforesaid Government Order, on humanitarian grounds the petitioners were absorbed as contingent employees.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side, perused the impugned proceeding and other material made available on record.

At the outset, I am of the opinion that the action of the respondents in absorbing the petitioners as contingent employees is arbitrary and illegal.

Petitioners have asserted that when the proposals were sent to the Government to absorb them in the regular vacancies in view of the directions of this Court, the Government had, in fact, issued directions to the respondents in G.O.Ms.No.212 F &P (FWPCIII) Department, dated 22.4.1994 to absorb the petitioners in regular vacancies. But, instead of considering their cases for being absorbed in regular vacancies of Record Assistants or any other suitable posts, like Attenders, the respondents have adopted a course absorbing them as contingent employees, which is not known to law. Admittedly, the posts of contingent employees are not borne on the cadre strength of the 3rd respondent-College. In fact, petitioners have brought to the notice of this Court the vacancy position in V.R. College, Nellore, which shows that as many as 10 posts of Record Assistants were lying vacant. The respondents instead of absorbing the petitioners against those vacancies adopted a novel method of absorbing them as contingent employees as if they have considered the same in terms of G.O.Ms.No. G.O.Ms.No.212 F &P (FWPCIII) department dated 22.4.1994. As seen from the said G.O., it does not contemplate absorption of any employee as contingent employee. Further, it contemplates absorption in the regular vacancies borne on the cadre strength of that particular College. In view of the same, the impugned proceedings are liable to be set aside. They are accordingly set aside.

For the foregoing discussion, the Writ Petition is allowed and there shall be a direction to the respondents to absorb the petitioners as Record Assistants or as Attenders in the regular vacancies available as on the date when the impugned proceedings were issued. Further, the service of the petitioners shall be counted in the cadre of such posts for the purpose of seniority and other service benefits from the date of passing of the impugned proceeding. The respondents are further directed to put the petitioners on regular scale of pay applicable to the said posts.

However, their increments etc., shall be fixed notionally. No costs.

10th August, 2005.

Kgr

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V. RAMULU

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WRIT PETITION No : 4156 OF 1998

Between:

1. Y. Koteswara Rao & Another **.....**PETITIONERS

AND

1. The Secretary, Education Department, Secretariat Buildings,

   Hyderabad & Two others

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

Counsel for the Petitioner: Mr. S. SRINIVAS REDDY

Counsel for the Respondents.: GP FOR HIGHER EDUCATION (for R1 and R2)